

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
MICHAEL AND SHIRLEY R. ANSOORIAN	:	DETERMINATION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1984.	:	

Petitioners, Michael and Shirley R. Ansoorian, 18 Helena Avenue, Larchmont, New York 10538, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1984 (File No. 804825).

A hearing was held before Robert F. Mulligan, Administrative Law Judge, at the offices of the Division of Tax Appeals, Two World Trade Center, New York, New York, on May 1, 1989 at 1:30 P.M. Petitioners appeared by Michael Ansoorian. The Division of Taxation appeared by William F. Collins, Esq. (Angelo A. Scopellito, Esq., of counsel).

ISSUE

Whether petitioners are liable for a penalty under Tax Law § 685(c) for underestimation of New York State personal income tax.

FINDINGS OF FACT

Petitioners, Michael and Shirley R. Ansoorian, filed a joint New York State Resident Income Tax Return and a City of Yonkers Nonresident Earnings Tax Return for the year 1984. Petitioners reported \$41,680.80 in wage and salary income and \$13,835.16 in interest income. The total of New York State personal income tax and City of Yonkers nonresident earnings tax was \$5,222.09 with \$3,144.48 having been withheld from wages, leaving a balance due of \$2,077.61. Petitioners' Form IT-250, Maximum Tax on Personal Service Income, for the year 1984 was attached to the income tax return. No amount was included on the form for employee business expenses. Instead, an asterisk was placed in the space left for that amount, with a handwritten notation referring to it stating: "Blacklist expenses being deferred to an appropriate time."

Attached to petitioners' income tax return was a wage and tax statement for the year 1984 issued to petitioner Michael Ansoorian by Loral Corporation, Electronics Division, 999 Central Park Avenue, Yonkers, New York. The statement showed wage and salary income of \$41,680.80 with State income tax withheld of \$3,144.48.

On April 1, 1987, the Division of Taxation issued a Notice and Demand for Payment of Income Tax Due for the year 1984 to petitioners, asserting a penalty of \$57.66 under Tax Law § 685(c) for underestimation of State income tax. The Division of Taxation's answer to the petition alleged that the penalty was based on petitioners' failure to file and pay estimated tax on

their 1984 interest income.

Petitioners timely protested the notice and demand. However, the petition did not refer to the interest income issue but instead alleged that certain deductions for employee business expenses for the year 1984 should be allowed for the purpose of redetermining petitioners' tax liability. These expenses did not appear on the income tax return. Petitioners asserted, in both the petition and at the hearing, that these expenses had been incurred because of actions which had been intentionally orchestrated by the employer and the Federal government in order to punish Mr. Ansoorian for his alleged "whistle blowing" activities with respect to waste in the defense industry. Petitioners claim that the employee business expenses consist of unspecified automobile expenses resulting from Mr. Ansoorian's transfer from Loral's Yonkers plant to its Bronx plant. Petitioners argue that the Federal government "blacklisted" Mr. Ansoorian and that the transfer was effected solely for the purpose of harassing and financially incapacitating Mr. Ansoorian.

CONCLUSIONS OF LAW

A. That subdivision (c) of Tax Law § 685 provides a penalty for underpayment of estimated New York State personal income tax. Subdivision (d) provides that there are certain exceptions to the penalty for underpayment of estimated tax.

B. That petitioners clearly underestimated income tax for 1984. Moreover, petitioners have not sustained their burden of proof under Tax Law § 689(e) to show that they are entitled to an exception under Tax Law § 685(d). While it is regrettable that petitioner Michael Ansoorian encountered employment difficulties and additional expenses which were evidently precipitated by his efforts to prevent waste in the defense industry, there is nothing in the record which could justify cancellation of the penalty. Accordingly, the notice and demand must be sustained.

C. That the petition of Michael and Shirley R. Ansoorian is denied and the Notice and Demand for Payment of Income Tax Due issued April 1, 1987 is sustained.

DATED: Troy, New York
October 12, 1989

/s/ Robert F. Mulligan
ADMINISTRATIVE LAW JUDGE